

800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Permanent disqualification from service.* (1) An employee who has verified positive drug test results on two drug tests required by this subpart of this chapter, and conducted after September 19, 1994, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.

(2) An employee who has engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994 is permanently precluded from performing that safety-sensitive function for an employer.

(f) *DOT management information system annual reports.* Copies of any annual reports submitted to the FAA under this subpart must be maintained by the employer for a minimum of 5 years.

§ 120.113 Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.

(a) The employer shall designate or appoint a Medical Review Officer (MRO) who shall be qualified in accordance with 49 CFR part 40 and shall perform the functions set forth in 49 CFR part 40 and this subpart. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

(b) *Medical Review Officer (MRO).* The MRO must perform the functions set forth in subpart G of 49 CFR part 40, and subpart E of this part. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (*e.g.*, notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

(c) *Substance Abuse Professional (SAP).* The SAP must perform the functions set forth in 49 CFR part 40, subpart O.

(d) *Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.* (1) As part of verifying a confirmed positive test result or refusal to submit to a test, the MRO must ask and the individual must answer whether he or she holds an airman medical certificate issued under 14 CFR part 67 or would be required to hold an airman medical certificate to perform a safety-sensitive function for the employer. If the individual answers in the affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph (d)(5) of this section, the name of the individual, along with identifying information and supporting documentation, within 2 working days after verifying a positive drug test result or refusal to submit to a test.

(2) During the SAP interview required for a verified positive test result or a refusal to submit to a test, the SAP must ask and the individual must answer whether he or she holds or would be required to hold an airman medical certificate issued under 14 CFR part 67 to perform a safety-sensitive function for the employer. If the individual answers in the affirmative, the individual must obtain an airman medical certificate issued by the Federal Air Surgeon dated after the verified positive drug test result date or refusal to test date. After the individual obtains this airman medical certificate, the SAP may recommend to the employer that the individual may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(3) An employer must forward to the Federal Air Surgeon within 2 working days of receipt, copies of all reports provided to the employer by a SAP regarding the following:

(i) An individual who the MRO has reported to the Federal Air Surgeon under § 120.113 (d)(1); or

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(ii) An individual who the employer has reported to the Federal Air Surgeon under § 120.111(d).

(4) The employer must not permit an employee who is required to hold an airman medical certificate under 14 CFR part 67 to perform a safety-sensitive duty to resume that duty until the employee has:

(i) Been issued an airman medical certificate from the Federal Air Surgeon after the date of the verified positive drug test result or refusal to test; and

(ii) Met the return to duty requirements in accordance with 49 CFR part 40.

(5) Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(6) MROs, SAPs, and employers who send reports to the Federal Air Surgeon must keep a copy of each report for 5 years.

§ 120.115 Employee Assistance Program (EAP).

(a) The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

(b) *EAP education program.* (1) Each EAP education program must include at least the following elements:

(i) Display and distribution of informational material;

(ii) Display and distribution of a community service hot-line telephone number for employee assistance; and

(iii) Display and distribution of the employer's policy regarding drug use in the workplace.

(2) The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug

test result, or refusing to submit to a drug test required under the rule.

(c) *EAP training program.* (1) Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements:

(i) The effects and consequences of drug use on individual health, safety, and work environment;

(ii) The manifestations and behavioral cues that may indicate drug use and abuse; and

(2) The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified in § 120.115 (c).

(3) The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training.

(4) The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years.

(5) Documentation of all training given to employees and supervisory personnel must be included in the training program.

(6) The employer shall identify the employee and supervisor EAP training in the employer's drug testing program.

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§ 120.117 Implementing a drug testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Anti-drug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA: